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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 515.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOHN ZIMMERMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 515.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ or error	1	1
Clerk's certificate	2	1
Declaration	4	2
Plea	8	4
Judgment	10	4
Bill of exceptions	12	5
Assignment of errors	21	7
Citation	24	8

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between John Zimmermann, plaintiff, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-six, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 8th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

JOHN I. DAVENPORT, *Clk.*

The foregoing writ is hereby allowed.

SAM'L BLATCHFORD.

2 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against John Zimmermann, defendant in error. Writ of error. Filed June 9, 1876.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to 25 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, and John Zimmermann, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

3 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, of the term of April, 1876, to wit, of the 24th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that, heretofore, to wit, on the 24th day of April, 1876, in April term of that year, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came John Zimmerman, by Isaac Philipps, his attorney, and brought into the said court, before the aforesaid judges thereof,
4 then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case, upon promises; which said declaration follows, in these words, that is to say:

U. S. circuit court.

JOHN ZIMMERMAN *ag't* CHESTER A. ARTHUR.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Continued.

JOHN ZIMMERMAN, PLAINTIFF, *against* CHESTER A. ARTHUR, DEF'D'T.

THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit, of the sixteenth day of February, in the year of our Lord one thousand eight hundred & seventy-five:

THE SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Zimmerman, plaintiff in this suit, comes here into court and by Isaac Phillips, his attorney, suggest' and give' the court now here to understand and be informed that, heretofore, to wit, on the fifth day of May last past, an action was commenced in the superior court of the city of New York, according to the laws of the State of New
5 York, and the rules and practice of said court, in such case made and provided, in favor and in the name of the said plaintiff, against Chester A. Arthur, the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said superior court on the same day.

That the defendant afterwards, by George Bliss, esquire, his attorney, duly appeared in said action, and such proceedings were thereupon had that afterwards, and on the seventeenth day of June, in the year of our Lord one thousand eight hundred and seventy-four, the said action was in due form of law removed by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided; and the clerk of the said superior court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the said plaintiffs accordingly, by Isaac Phillips, his attor-
6 ney, complain' of the defendant in this suit, being in custody, &c., of a plea of trespass on the case upon promises, for that whereas the said defendant, heretofore, to wit, on the day of the date of this declaration, to wit, at the city of New York, in the district aforesaid, was indebted to the said plaintiffs in the sum of one thousand (gold) dollars, lawful money of the United States of America, for duties on certain merchandize, to wit, braids for making or ornamenting hats and bonnets, imported into and entered at the collection district of the United States for the city of New York, on or about the following dates, to wit, 23 & 28 Nov., 1873; 6, 9, 11, & 19 Dec., '73; 9, 12, 16, 14, 22, 29, & 30 Jan'y, '74; 12, 13, & 20 Feb'y, 1874; 10 & 20 March, 1874, *in the year' one thousand eight hundred and seventy-three & seventy-four*, in the following ships or vessels, to wit: Weser, Canada, Pereire, Mosel, Thuringia, Europe, New York, Hammonia, Silesia, Republic, Frisia, Amerique, Oceanic, Holsatia, and Baltic, from Bremen, London, Havre, Hamburg, and Liverpool, unlawfully demanded, exacted, and received, at the city of New York aforesaid, in the district aforesaid, by the said defendant, then collector of the customs for the district aforesaid, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiff under protest in writing in due form of law.

7 And, being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiffs the sum of money above mentioned, when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand (gold) dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant, before that time had and received to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff, well and truly to pay unto
8 the said plaintiffs the said sum of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant (although often afterwards requested so to do) has not as yet paid the said several sums of money above mentioned or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of two thousand dollars; and therefore the said plaintiff brings suit, &c.

ISAAC PHILLIPS,
Attorney for the Plaintiff.

Continued.

Plea.

U. S. circuit court, southern district of New York.

CHESTER A. ARTHUR *ads.* JOHN ZIMMERMAN.

And the said defendant, Chester A. Arthur, by George Bliss, esq., his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiff in this suit hath above thereof declared against the said
9 defendant, and of this he puts himself upon the country; and the said plaintiff doth the like, &c.

Therefore the issue above joined is ordered by the said circuit court to be tried at the court appointed to be held at the U. S. court buildings, in the city of New York, and in the district and circuit aforesaid, on the first Monday of April, 1876. A day is given to the parties aforesaid before the judges aforesaid at the U. S. court buildings in the city of New York on the first Monday of April, 1876.

And now at this day, to wit, on the first Monday, & on 24th day, of April, 1876, before the said judges of the said circuit court, at the U. S. court buildings, in the city of New York, comes the said plaintiff by his attorney aforesaid, and W'm J. Wallace, esquire, district judge of the United States for the district of New York in the second circuit, before whom the said issue was tried, hath sent hither his record had before him in these words:

Afterwards, that is to say on the day and at the place within contained, before W'm J. Wallace, esquire, district judge of the United States for the district of New York in the second circuit within named, according to the form of the statute in such case made and provided, comes as well the within-named plaintiff by Isaac Phillips, his attorney, as the within-named defendant, by George Bliss, his attorney, and the
10 jurors of the jury summoned to try the said issue being called also come, who, to speak the truth of the matter within contained, being chosen, tried, and sworn, say, upon their oath, that the defendant did undertake and promise in manner and form as said plaintiff has within complained against him, and they assess the damages of the said plaintiff by reason of the premises over and above his costs and charges by him about his suit in this behalf expended to six hundred and seven dollars and eight cents in gold coin, as principal, and seventy-nine dollars and fifty-one cents, in currency, as interest, and for his costs and charges to forty-six $\frac{55}{100}$ dollars and eighty-five cents, in currency.

Therefore it is considered that the said plaintiff does recover against the said defendant his said damages, costs, and charges by the jurors aforesaid, in form aforesaid, asses'ed, and also forty-six $\frac{55}{100}$ dollars for *their* said costs and charges, by the said court now here adjudged of increase to the said plaintiff and with *their* assent, which said damages, costs, and charges in the whole amount to six hundred and seven dollars and eight cents, in gold coin, and one hundred and twenty-six dollars thirty-six cents, in currency.

Judgment signed this 2d day of June, 1876.

JOHN I. DAVENPORT, *Clerk.*

11 (Indorsed:) U. S. circuit court. John Zimmerman vs. Chester A. Arthur. Judgment record. Isaac Phillips, plaintiff's attorney. Filed June 2, 1876.

12 *Bill of exceptions.*

United States circuit court, southern district of New York.

JOHN ZIMMERMANN
v.
CHESTER A. ARTHUR.

This cause came on for trial at the April term, 1876, of the United States circuit court for the southern district of New York, on the 24th day of April, 1876, before the Hon. William J. Wallace, district judge, sitting as circuit judge, and a jury duly empannelled and sworn, the parties being represented by counsel.

To maintain the issues on the part of the plaintiff, plaintiff's counsel put in evidence the following agreed statement of facts:

The plaintiff has been since 1st July, 1873, an importer of merchandise at the city of New York, under the style and firm of John Zimmermann & Co., and the defendant since the 1st December, 1871,
13 the collector of customs at the port of New York.

The plaintiff, as such firm, imported from London, Liverpool, Bremen, Hamburg, and Havre, merchandise by sundry vessels, and at the dates of entry given in the bill of particulars, and between November, 1873, and March, 1874.

The defendant as such collector assessed and collected as duties thereon at the rate of ninety per centum of thirty-five per centum ad valorem, the several sums in excess named in the bill of particulars, under the column-head of "amount of excess claimed," which were paid at the dates specified in said bill of particulars.

The plaintiff made within the time prescribed by law due protest in writing to the defendant against the exaction of the rate of duty aforesaid, claiming that the goods in question were only liable to a duty of ninety per centum of thirty per centum ad valorem, under the clause in section 8, act of 14 of July, 1862, reading, "On braids, plaits, flats,
14 laces, trimmings, sparterre, tissues, willow sheets and squares used for making or ornamenting hats, bonnets, and hoods, composed of straw, chips, grass, palm-leaf, willow, or any other vegetable substance, or of (hair), whalebone, or other material not otherwise provided for, thirty per centum ad valorem."

Within the time prescribed by law plaintiff appealed from the decision of the collector to the Secretary of the Treasury, who, having in each case affirmed the defendant's decision, the plaintiff brought this suit within ninety days thereafter. The importations were in fact braids or trimmings, made of cotton, and used for making or ornamenting hats and bonnets, and known in trade and commerce in 1861, and now known as hat-braids.

There are braids and trimmings of cotton, as well as of other materials, and used for purposes other than making or trimming bonnets and hats.

If the assessment was erroneous, the plaintiffs are entitled to recover the principal sum of $607.08, with interest from proper dates to time of trial, amounting to $79.51.

15 No other evidence was introduced. The defendant's counsel then moved that the court direct the jury to find a verdict for the defendant, which motion the court denied, and the defendant's counsel duly excepted. The defendant's counsel then requested the court to

submit the facts in the case to the jury, which the court denied, and the defendant's counsel duly excepted.

The defendant's counsel then requested the court to charge the jury that this being an action brought to recover an alleged illegal exaction of duty, and that assumpsit would lie only upon the theory that the law implied an obligation to refund money unlawfully exacted, belonging to the plaintiffs, that the plaintiff, in order to make out his case, must affirmatively establish the illegality of the exaction complained of.

The court declined so to charge, and the defendant's counsel duly excepted.

The defendant's counsel then requested the court to charge the
16 jury that an assessment of duty, regular on its face, and under a provision of law which covers the article assessed, at the rate of duty assessed, is a justification of the collector, and until it is affirmatively established that the goods in question are not comprehended within the terms of the act describing the goods and imposing the rate of duty actually assessed, that the plaintiff is not entitled to recover.

The court declined so to charge, and defendant's counsel duly excepted.

The defendant's counsel then requested the court to charge the jury that the burden of proof is upon the plaintiff to show the illegal character of the exaction complained of.

The court declined so to charge, and the defendant's counsel duly excepted.

The defendant's counsel then requested the court to charge the jury that the illegality is not established merely by showing that the articles
17 in question are described by another clause in the statute, by which a lower rate of duty may be attached to them than that exacted by the collector.

The court declined so to charge, and the defendant's counsel duly excepted.

The defendant's counsel then requested the court to charge the jury that if, upon the evidence or conceded facts, the jury can determine that these articles were braids or trimmings, and made of cotton, that then they were correctly assessed, irrespective of any other consideration.

The court declined so to charge, and defendant's counsel duly excepted.

Defendant's counsel then requested the court to hold and instruct the jury that the phrase in sec. 8, of the act of July 14, 1862, reading, "On braids, plaits, flats, laces, trimmings, * * * * * used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm-leaf, willow, or any other vegetable substance, * * * * or other material not otherwise provided for, thirty per cent. ad valorem," does not refer to goods that are described by terms of general or specific description in the act of 1864.

18 The court declined so to hold, and defendant's counsel duly excepted.

The court then ruled that upon the stated facts in the case there was no question for the jury, but that the case resolved into a question of law, upon which plaintiff was entitled to a verdict.

The court then directed the jury to find a verdict for the plaintiff, to which ruling and direction the defendant's counsel duly excepted.

Defendant's counsel asked the court to submit to the jury the single question whether the articles in question are braids and trimmings made of cotton.

This the court declined for reasons above stated, and defendant's counsel duly excepted.

The jury then rendered a verdict for the plaintiff for the sum of six hundred seven and $\frac{8}{100}$ dollars, principal, and seventy-nine and $\frac{51}{100}$ dollars interest.

And inasmuch as the aforesaid several matters of fact and of law, and the said several exceptions do not appear by the record of said
19 trial, therefore, on the prayer of said defendant, by his counsel, the said judge has signed, and allowed the foregoing as and for the bill of exceptions in this case, and directed the same to be filed, as of the day of trial as aforesaid, at the April term, 1876, of said court, to wit, as of the said 24th day of April, 1876.

WM J. WALLACE,
U. S. Dist. Judge.

20 (Indorsed:) U. S. circuit court, southern district of New York. John Zimmermann versus Chester A. Arthur. George Bliss, United States attorney for the southern district of New York. Bill of exceptions. Filed June 1, 1876.

21 Supreme Court of the United States. Of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PL'FF IN ERROR,
against
JOHN ZIMMERMANN, DEF'T IN ERROR.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, at the city of Washington, comes the said Chester A. Arthur, by George Bliss, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant against the said plaintiff; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendant, and the said plaintiff prays that the judgment aforesaid, for the error afore-
22 said, and other errors in the record and proceeding aforesaid, as the same appears more fully wherein, may be reversed, annulled, and altogether held for nothing; and that he, the plaintiff, may be restored to those things which he has lost by reasons of the said judgment.

GEORGE BLISS,
United States Attorney, for the Plaintiff in Error.

(Endorsed:) Supreme Court of the United States. Chester A. Arthur, plaintiff in error, vs. John Zimmermann, def't in error. Assignment of error. Geo. Bliss, U. S. attorney, att'y for pl'ff in error. Filed July 19, 1876.

23 SOUTHERN DISTRICT OF NEW YORK.
City and County of New York, ss:

John Lenehan, being duly sworn, says that on the 9 day of June, 1876, he served the within citation on Isaac Phillips, esq., defendant's attorney, by leaving a copy thereof with the person in charge of the law office of said defendant's attorney, No. 59 & 61 Liberty street, in said city, said attorney being absent from his office at that time.

JOHN LENEHAN.

Sworn to before me this 9 day of June, 1876.

JOHN A. SHIELDS,
U. S. Com'r.

24 UNITED STATES OF AMERICA, *ss:*

To John Zimmermann, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 8th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

SAM'L BLATCHFORD.

(Indorsed:) 3010. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against John Zimmermann, defendant in error. Citation. E. & A. D., No. 2, p. 375.

Service of a copy of the within citation is hereby admitted.
New York, June 9, 1876.

I. P., *Att'y for Def't in Error.*

Filed June 9th, 1876.

(Indorsement on cover:) No. 515. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. John Zimmerman. S. New York C. C. U. S. Filed 13th October, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
v.
JOHN ZIMMERMAN.
} No. 515.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
v.
JOHN ZIMMERMAN. } No. 515.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

Between November, 1873, and March, 1874, the original plaintiff, Mr. Zimmerman, imported into New York "braids or trimmings, *made of cotton*, and used for making or ornamenting hats and bonnets," and known as hat-braids. (Record, 5, near bottom.) The collector demanded and received duty under the clause of the act of 1864, c. 171, § 6, which imposes "on *cotton braids*, insertings, lace trimming, or bobbinet, and *all other manufactures of cotton* not otherwise provided for, 35 per centum ad valorem." (13 Stat., 209.) The importer asserted that they were only liable to duty at 30 per cent., under act of July 14, 1862, § 8, as "braids * * * used for making or ornamenting hats," &c. (12 Stat.,

551, near top.) The presiding judge so instructed the jury, and directed a verdict for the plaintiff. (Record, 5, 6.)

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns as error the following action, rulings, and refusal of the presiding judge, viz:

1. His refusal to submit the facts in the case to the jury; to which refusal the defendant's counsel duly excepted. (Record, 6, top.)

2. The defendant's counsel then requested the court to charge the jury that this being an action brought to recover an alleged illegal exaction of duty, and that assumpsit would lie only upon the theory that the law implied an obligation to refund money unlawfully exacted, belonging to the plaintiffs, that the plaintiff, in order to make out his case, must affirmatively establish the illegality of the exaction complained of.

The court declined so to charge, and the defendant's counsel duly excepted.

3. The defendant's counsel then requested the court to charge the jury that an assessment of duty, regular on its face, and under a provision of law which covers the article assessed, at the rate of duty assessed, is a justification of the collector, and until it is affirmatively established that the goods in question are not comprehended within the terms of the act describing the goods and imposing the rate of duty actually assessed, that the plaintiff is not entitled to recover.

The court declined so to charge, and defendant's counsel duly excepted.

4. The defendant's counsel then requested the court to charge the jury that the burden of proof is upon the

plaintiff to show the illegal character of the exaction complained of.

The court declined so to charge, and the defendant's counsel duly excepted.

5. The defendant's counsel then requested the court to charge the jury that the illegality is not established merely by showing that the articles in question are described by another clause in the statute, by which a lower rate of duty may be attached to them than that exacted by the collector.

The court declined so to charge, and the defendant's counsel duly excepted.

6. The defendant's counsel then requested the court to charge the jury that if, upon the evidence or conceded facts, the jury can determine that these articles were braids or trimmings, and made of cotton, that then they were correctly assessed, irrespective of any other consideration.

The court declined so to charge, and defendant's counsel duly excepted.

7. Defendant's counsel then requested the court to hold and instruct the jury that the phrase in section 8 of the act of July 14, 1862, reading, "On braids, plaits, flats, laces, trimmings, * * * used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm-leaf, willow, or any other vegetable substance, * * * or other material not otherwise provided for, thirty per cent. ad valorem," does not refer to goods that are described by terms of general or specific description in the act of 1864.

The court declined so to hold, and defendant's counsel duly excepted.

8. The court then ruled that upon the stated facts in

the case there was no question for the jury, but that the case resolved itself into a question of law, upon which plaintiff was entitled to a verdict.

9. The court then directed the jury to find a verdict for the plaintiff, to which ruling and direction the defendant's counsel duly excepted.

10. Defendant's counsel asked the court to submit to the jury the single question whether the articles in question are braids and trimmings made of cotton.

This the court declined for reasons above stated, and defendant's counsel duly excepted.

BRIEF.

I.

If this court holds to its deliberate decision in Smythe *v.* Fiske (23 Wallace, 381, top), then the present judgment must be reversed for the refusal to give the instruction mentioned in the seventh assignment of error.

If the eighth section of the act of June 30, 1864, c. 171, meant to embrace *all* silk goods, the sixth section was intended to cover all *cotton* goods; and the "not otherwise provided for" means not provided for previously in that section. Reference to previous tariff acts was unauthorized. (23 Wallace, 381, top.)

II.

If the question of the burden of proof arises in this case, the propriety of the requested rulings will be defended upon the grounds indicated in the statement of them, and in the argument in No. 609 just submitted.

EDWIN B. SMITH,
Assistant Attorney-General.

Supreme Court of the United States.

No. 515.

CHESTER A. ARTHUR,
COLLECTOR OF THE PORT OF NEW YORK,
Plaintiff in Error,

versus

JOHN ZIMMERMAN,
Defendant in Error.

Brief of Defendant in Error.

ISAAC PHILLIPS,
Attorney for the Defendant in Error.

H. E. DAVIES, JR.,
Of Counsel.

NEW YORK:
Press of Gilbert, Lithographers and Printers, 39 Nassau Street.

U. S. Supreme Court.

CHESTER A. ARTHUR, Collector, &c.,
Plaintiff in Error,

agst.

JOHN ZIMMERMAN,
Defendant in Error.

Brief of Defendant in Error.

STATEMENT OF FACTS.

This action was brought in the Circuit Court of the United States for the Southern District of New York, to recover back from the plaintiff in error, duties illegally exacted by him and paid under protest by the defendant in error.

The cause came on for trial before the Hon. WILLIAM I. WALLACE, District Judge, and a jury.

The only evidence produced on the part of plaintiff, was an agreed statement of facts, from which it appeared:

1. That the goods in question were imported, and the plaintiff had paid duties thereon, as charged in his declaration, and had duly protested against such payment, and appealed in due form and within the time allowed by law from the decision upon the protest.

2. That the goods so imported by the plaintiff in the court below, were in fact braids or trimmings

made of cotton, and used for making or ornamenting hats and bonnets.

3. That such goods were known in trade and commerce in 1861, and at the time of the trial, as "hat braids."

4. That there are *braids* and *trimmings* of cotton as well as of other materials and used for purposes other than making and trimming bonnets and hats.

5. That the defendant below, as Collector of Customs at the port of New York, assessed and collected duty upon these goods at the rate of ninety per centum of thirty-five per centum ad valorem.

6. That the plaintiff below protested against the exaction of such duty, claiming that the goods in question were only liable to duty at the rate of ninety per centum of *thirty* per cent. ad valorem, under the clause of §8 of the Act of Congress passed July 14, 1862, which reads:

"On braids, plaits, flats, laces, trimmings, sparterre, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets and hoods composed of straw, chips, grass, palm leaf, willow, or any other vegetable substance, or of hair, whalebone or other material not otherwise provided for, *thirty* per centum ad valorem."

The plaintiff upon these facts rested his case; no evidence was presented by the defendant, and the Court directed the jury to bring in a verdict for the amount claimed.

To this ruling counsel for defendant excepted and the only question upon this appeal turns upon the correctness of that ruling.

Argument.

Upon the trial of this cause it was insisted on behalf of the Collector defendant that the goods in question were liable to a duty of ninety per centum of thirty-five per centum ad valorem under the Tariff Act of 1864, as being decribed and intended in the clause imposing that duty upon

> "COTTON braids, insertings, lace trimmings "or bobbinet, and all other manufactures of "cotton, not otherwise provided for, thirty-"five per centum, ad valorem."
>
> U. S. Stat. 1864, Vol. 13, Chap. 121, §6.

The fact was not disputed that these goods were known, and for more than fifteen years past had been known, in trade and commerce, as "hat braids" and were intended and exclusively used for making and ornamenting hats, bonnets, &c.

It also appeared that there were articles known as "cotton braids," which were used for other purposes.

In examining this case it is of importance to observe the legislation by Congress previous and subsequent to the passage of the Act under which this duty is claimed.

In the Act of March 2, 1861, U. S. Stat., Vol. 12, Chap. 68, p. 178, these clauses are found :

> SEC. 20. * * "Cotton lacings, cotton in-"sertings, cotton trimming laces and cotton "braids. * * "
>
> SEC. 14. * * "And on all manufactures "composed wholly of cotton, bleached, un-"bleached, printed, painted or dyed, not "otherwise provided for. * * "
>
> Sect. 22. "* * Flats, braids, plaits, spar-"terre, and willow squares, used for making "hats and bonnets. * *"

"* * Hats and bonnets for men, women "and children, composed of straw, chip, grass, "palm leaf, willow or of any other vegeta- "ble substance, or of hair, whalebone or oth- "er material not otherwise provided for."

In the Act of July 14th, 1862, U. S. Stat., Vol. 12, Chap. 158, p, 543, the following provisions are found:

Sect. 8. "* * In lieu of the duties "heretofore imposed by law * * * * "On braids, plaits, flats, laces, trimmings, "sparterre, tissues, willow sheets and squares "used for making or ornamenting hats, bon- "nets and hoods, composed of straw, chip, "grass, palm leaf, willow, or any other vege- "table substance, or of hair, whalebone, or "other material, not otherwise provided for, "thirty percentum ad valorem. * * "

Sect. 10. "* * On all manufactures com- "posed wholly of cotton, bleached, un- "bleached, printed, painted or dyed, not "otherwise provided for. * * * "

Sect. 13. "* * Cotton laces, cotton in- "sertings, cotton trimmings, laces and cotton "braids, colored or uncolored. * * "

And in the Revised Statutes of the United States these goods are classified, described, and duty thereon imposed as follows.

Revised Statutes U. S., Ed. 1875, Title 33, Duties on Imports, Schedule A, §2504, p. 464:

"Cotton braids, insertings, lace trimming "or bobbinet, and all other manufactures of "cotton, not otherwise provided for, thirty- "five per centum ad valorem."

Schedule M, same section, p. 480:

"* * Hats, &c., materials for.—Braids,

"plaits, flats, laces, trimmings, tissues, wil-
"low sheets and squares, used for making or
"ornamenting hats, bonnets and hoods, com-
"posed of straw, chip, grass, palm leaf, wil-
"low, or any other vegetable substance, or of
"hair, whalebone, or other material, not
"otherwise provided for, thirty per centum
"ad valorem."

It thus appears that for a period extending over thirteen years, and in four several Acts, Congress had recognized and adopted the commercial distinction already existing between "hat braids" and "cotton braids," and also had established the fact that neither of these articles had been or could be classed among "manufactures of cotton not otherwise provided for."

Points.

I.

These goods were known in trade and commerce as "HAT BRAIDS" as far back as 1861, and have ever since been so known and called. This name, the use for which the goods were intended, and the substance of which they are made, were recognized and adopted in the Acts of 1861 and 1862, cited above, and have again received Legislative approval in the Revised Statutes. In all these Acts, "COTTON BRAIDS" and "OTHER MANUFACTURES OF COTTON NOT OTHERWISE PROVIDED FOR," and "HAT BRAIDS," are recognized as distinct and different articles.

The rule to be followed in the construction of Revenue Statutes in cases like this is well settled in this Court. It is that descriptive terms applied to articles of commerce shall be understood according to the acceptation given to them by commercial men at the time

of the passage of the Act in which they are found.

Arthur *v.* Cumings, 91 U. S. (Otto), 362.
U. S. *v.* Two hundred Chests of Tea, 9 Wheaton, 230.
Elliott *v.* Swartwout, 10 Pet., 151.
Curtis *v.* Martin, 3 How, 106.

II.

Apart from the question of *commercial* designation, the intent of Congress to distinguish these articles from "cotton braids" or "*manufactures of cotton*" is apparent from the various Statutes cited.

These hat braids were clearly designated and described in the Act of 1862, and there distinguished from cotton braids and non-enumerated manufactures of cotton.

The application of the words "COTTON BRAIDS" and "other manufactures of cotton not otherwise provided for" was determined so far as they could affect these "hat braids," and there is nothing in the Act of 1864 which shows any design or intention to enlarge the existing definition or extend the application of these terms.

The subsequent re-enactment of the different duties applicable to these several articles in the Revised Statutes is conclusive upon this point.

> A subsequent Tariff Statute must be read by the light of the first. * * * *
>
> It is fair to presume in case a special meaning were attached to certain words in a prior Tariff Act, that Congress intended they should have the same signification when used in a subsequent Act in relation to the same subject matter.

Recihe *v.* Smythe, 13 Wallace, 162.
Homan *v.* Collecter, 1 Wallace, 486.

The Revised Statutes are good evidence of the intent of Congress in the prior Acts which are there collated, and must be taken as a legislative declaration of the objects and purposes of previous laws.

"It was the intention of Congress to collate all the Statutes as they were at that date, and not to make any change in their provisions."

Smythe *v.* Fiske, 23 Wall, 374.

III.

The language used in the Act of 1862 shows that braids, plaits, flats, &c., composed of any vegetable substance were included in the clause of the 22d section imposing duty upon such articles. The articles therein referred to as "not otherwise provided for" were those composed of material other than vegetable substance, hair, and whalebone.

IV.

The ruling of the Court, that upon the evidence there was no question for the jury, but that the case resolved itself into a question of law, upon which the plaintiff was entitled to a verdict, and the subsequent direction so to find, were correct.

Arthur *v.* Cumming, 91 U. S., 362.
Schuchardt *v.* Allens, 1 Wallace, 359.

That ruling being correct, the defendant was not entitled to requests to charge, or to exceptions to refusals to such requests.

The requests of the defendant all asked to have questions submitted to the jury that could only be determined by the Court.

1. There was no question of fact in the case.

2. The requests were all, that the jury should pass upon questions of law, and were properly refused by the Court.

V.

The writ of error should be dismissed

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